IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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S.T.C. No.26 of 2002
Date of Decision:08.02.2007

Food Corporation of India, Ferozepur, registered office at Chandigarh

.....Petitioner

Vs.

The State of Punjab

.....Respondent

CORAM:- HON'BLE MR. JUSTICE M.M.KUMAR
HON'BLE MR. JUSTICE RAJESH BINDAL

Present:- Mr. K.L.Goyal, Advocate for the petitioner.

Ms. Urvashi Dhugga, AAG, Punjab.

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Rajesh Bindal, J.

The assessee has approached this Court by filing the present petition under Section 22(2) of the Punjab General Sales Tax Act, 1948 (for short, `the Act') seeking a direction to the Sales Tax Tribunal, Punjab (for short, `the Tribunal') to draw the statement of the case for referring the following questions of law for opinion of this Court, arising out of order dated 24.8.1998 pertaining to assessment year 1971-72:-

a) Whether in the facts and circumstances of the present case, could the assessment of the FCI be framed in the face of the fact that according to Departmental instructions, no assessment of the FCI was to be framed for the period 2/72 to 3/75 since the entire tax for this period had been paid by way of lump-sum payment by the Central Govt. for and on behalf of FCI to the Punjab Government?

b) Whether in the facts and circumstances of the present case, the instructions of the Department issued by the Excise & Taxation Commissioner to the Assessing authorities, were binding on the Assessing Authorities or not?

c) Whether in the facts and circumstances of the present case, was it proper to hold that since the instructions

under reference were not a part of the statute, therefore, the same could be treated to be without any authority of law?"

At the very outset, learned counsel appearing for the respondent stated that in view of settlement arrived at between the assessee and the Excise & Taxation Department, no assessment under the Act is required to be framed for the period from 1.2.1972 to 31.3.1975, as the tax for that period has already been paid by the assessee in lump-sum. The relief claimed by the assessee in the present case pertains to the period February and March, 1972 falling within the assessment year 1971-72. In view of the statement made by learned counsel appearing for the State and the facts of the case not being in dispute, we treat the questions proposed by the assessee having been referred to this Court for opinion and accordingly answer the same in favour of the assessee and against the revenue in terms of the statement made by learned counsel for the respondent.

Accordingly, it is directed that the assessee would be entitled to refund/ adjustment of the amount of tax if any assessed/paid for the period commencing from 1.2.1972 to 31.3.1972, in terms of the settlement arrived at between the parties.

The reference is disposed of in the manner indicated above.

(RAJESH BINDAL)
JUDGE

February 08, 2007 **(M.M.KUMAR)**
renu **JUDGE**